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10/604,383	07/16/2003	Jesse Jackson Swanner	014541 I	1382

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/604,383

Applicant(s)

SWANNER, JESSE JACKSON

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,13,20-25,27-34,38 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,10-12,26 and 35-37 is/are rejected.
- 7) ☒ Claim(s) 14-19 and 39-41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10-15-03
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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***Acknowledgements***

1. The Election filed 04-25-2005 has been entered.

***Election/Restriction***

2. The Restriction Requirement dated 03-25-2005 required a restriction between two species; Species I, the cart of Figures 1 and 2 and Species II, the cart of Figure 8.

Additionally, several "subspecies" were associated with each species.

3. In the Election noted above, the Applicant elected to prosecute the invention of Species I, Subspecies II, 2<sup>nd</sup> subspecies with traverse. The Applicant has identified claims 1-7, 10-12, 14-19, 22-24, 26, 35-37 and 39-41 as being "readable" on the elected species and corresponding subspecies.

4. In the reasons for traversal on the Election, the Applicant states "Applicant does not believe the claims drawn to the non-elected species and subspecies constitute an unreasonable number and any additional time to examine these claims would be de minimus".

Examiner's Response - The Examiner notes that a search for all species and subspecies would be substantially the same, though not necessarily identical for all species and subspecies. However, a search for several species and subspecies, though substantially the same prior art being searched, takes much longer than a search for a single species and corresponding subspecies, as the Examiner has to search the prior art for the "features" of each species and subspecies, as opposed to one species. Additionally, the "Office Action" takes longer to prepare, as several

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species and subspecies would have to be treated, perhaps utilizing different prior art, as well as consideration of the claims of each species and subspecies for objections and 112 rejections. Due to this, the Examination of several species and subspecies, even though the search is substantially the same, is considered to pose a burden on the Examiner. Also note that Applicant is entitled to claims drawn toward a non-elected species, provided these claims are dependant upon an allowable generic claim.

Regarding the identified claims that read on the elected species, the Examiner disagrees that claims 22-24 read on the elected species. The recitation of "plurality of sub-compartments" recited in claim 22 is best understood to correspond to non-elected Species II, as only Figure 8 shows a plurality of sub-compartments. Similarly, only Figure 8 shows baseball bats being received in a sub-compartment as recited in claim 23 and a water bottle being held in a tray as recited in claim 24. Accordingly, claims 22-24 are also withdrawn from consideration.

Accordingly, the restriction requirement above is deemed proper and made FINAL. Applicant is requested to cancel claims drawn toward a non-elected species, or subspecies.

5. An action on the merits of the elected invention, Species I, Subspecies II, 2<sup>nd</sup> subspecies, claims 1-7, 10-12, 14-19, 26, 35-37 and 39-41 follows.

### ***Specification***

6. The specification is objected to because of the following:

A) The following inconsistencies in nomenclature were noted:

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1) Paragraph 0022 recites both "latch assembly 402" and ball shaped element 402".

2) Paragraph 0022 recites both "coil spring 404" and "bullet element 404".

3) Paragraph 0026 recites both "second opening 202" and "aligned openings 202".

4) Paragraph 0029 recites "fastener 162". Paragraph 0030 recites "retainer assembly 162".

5) Paragraph 0030 recites both "second opening 708" and "aligned opening 708".

To avoid confusion to the reader, and to facilitate identifying components by nomenclature in the claims, it is requested Applicant use consistent nomenclature for the same reference number throughout the specification.

### ***Drawings***

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign mentioned in the description:

714. Correction is required.

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the features canceled from the claims. No new matter should be entered.

Claim 25 – though this claim is withdrawn, it is not believed that the "system to brake the wheels" set forth in claim 25 has been illustrated. In the event that claim 25 is

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made dependant upon an allowable generic claim, this structure will be required to be illustrated without adding new matter.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7, 10-12, 26 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 3044595, in view of WO 95/20933.

DE 3044595 teaches a cart, comprising:

a compartment (Figure 2) to retain equipment or items;

a first pair of handles and a second pair of handles (handles that extend from the ends of 4 in Figs. 2 and 4); and

a pair of wheels, each removably (see English language abstract) mounted to an axle on each side of the compartment (Figures 2 and 3 – see also comment below).

DE 3044595 fails to explicitly state that the first pair of handles are extendable from a one end of the compartment and the second pair of handles extendable from another end of the compartment, although Figure 4 would appear to show a “knob” that lets the handles “smaller portions” to “telescope” inside reference number 4.

However, it is old and well known to make handles extendable, or telescopic.

This is advantageous in that the handles may extend to support items, or extend for the

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comfort and convenience of a user and “collapse” to make the vehicle the handles are attached to, more compact for storage. WO 95/20933, for example, teaches a first and second pair of handles (1) that are extendable (see abstract), wherein the first and second pairs of handles permit the cart to be simultaneously pushed and pulled (by means of retaining means 3 and 3a).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize extendable handles in the cart of DE 3044595, as taught by WO 95/20933.

Regarding the recitation of “axle” in claim 1, the drawing figures of DE 3044595 appear to show an axle, though there appears to be no reference number associated with the axle to “positively define it”. However, the Examiner takes Official Notice that wheels are commonly mounted on axles. This may be seen on virtually any wheel of any cart. Axles provide a bearing surface upon which the wheel may rotate.

Regarding claims 3 and 4, note that any two parts that are attached may be removed with varying degrees of difficulty.

Regarding claim 4, note that DE 3044595 teaches “stub axles”, as opposed to a single “through axle”.

Regarding claim 10, see reference number 2 of WO 95/20933.

Regarding claim 11, see reference number 13 of DE 3044595.

Regarding claim 12, note that it is considered within the skill level of one of ordinary skill in the art to duplicate parts. See Section 2144 of the MPEP. Adding an

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additional support leg on the opposite end of the cart of DE 3044595 is advantageous in that additional stability is provided when the cart is "at rest".

Regarding claim 26, although the "width" of the cart of DE 3044595 is not explicitly stated, it is the Examiner's position that the cart may fit through a "doorway", such as a "garage doorway".

Regarding the method of recited in claims 35-37, it is the Examiner's position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to include the claimed method taught by DE 3044595, as modified by WO 95/20933. Because the prior art discloses all the structure necessary to perform the claimed functions, one of ordinary skill in the art would find the claimed method to be an obvious step in light of the disclosed structure. See MPEP §2112.02. See also *In re King*, 801 F2d 1324, 1326; 231 USPQ 136, 138 (Fed Cir 1986).

### ***Allowable Subject Matter***

11. Claims 14-19 and 39-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



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A) Goodale (2 patents), Curran, Wegener, Burns, Gardner, Crossman, et al,  
Swartzlander – teach carts

B) Bradford – teaches a stretcher with extendable handles

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (571) 272-6694. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 6-18-5  
**BRYAN FISCHMANN**  
**PRIMARY EXAMINER**